REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PROVINCIAL GOVERNMENT OF CAGAYAN, REP. EMILIA L. IRINGAN, In her Official Capacity as the Provincial Treasurer of the Province of Cagayan,	**CTA OC No. 18**
	Members:
Plaintiff,	**DEL ROSARIO,** ***Chairperson*** **UY,** ***and*** **MINDARO-GRULLA,** ***JJ.***
- versus -	
NATIONAL GRID CORPORATION OF THE PHILIPPINES,	**Promulgated:**
Defendant.	JAN 23 2015 ; 2:00 p.m.

x - x

RESOLUTION

UY, *J.*:

For this Court's resolution is plaintiff's **"MOTION FOR RECONSIDERATION (ON THE RESOLUTION DATED 29 SEPTEMBER 2014)**[1] filed on October 28, 2014 and received by the Court on November 5, 2014, with defendant's **"OPPOSITION (TO THE PLAINTIFF'S MOTION FOR RECONSIDERATION)"**[2] filed on November 11, 2014.

Plaintiff assails the Resolution promulgated by the Court on September 29, 2014, the dispositive portion of which reads:

> "**WHEREFORE,** in the light of the foregoing considerations, defendant's Motion to Dismiss is hereby **GRANTED**. The instant case is hereby **DISMISSED**, for lack of jurisdiction."

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[1] Docket, pp. 378 to 385.
[2] Docket, pp. 391 to 397.

In support of its Motion, plaintiff raises the following arguments:

1. The plaintiff is not proscribed in collecting the realty taxes even if there is a pending appeal on the assessment of real property;

2. The assessment that is subject in real property tax is the assessment made by the assessor and not the statement issued by the treasurer; and

3. The plaintiff may avail of the remedies for collection of real property tax by administrative action or by judicial action.

Plaintiff explains that pursuant to Section 231 of the Local Government Code (LGC), the appeal filed by defendant did not suspend the right of the plaintiff to collect the assessed real property tax from defendant; more so, since defendant failed to pay under protest its real property tax liability as required under Section 252 of the LGC. According to the plaintiff, Section 7, Rule V of the Local Board Assessment Appeals (LBAA) Rules of Procedure provides that an appeal shall not suspend the collection of the corresponding realty taxes on the real property and said appeal may be entertained but the hearing thereof shall be deferred until the corresponding real property tax have been paid under protest or defendant shall have given a surety bond.

Moreover, plaintiff avers that for purposes of filing a collection case under Section 231 and 256 of the LGC, the assessment made by the provincial assessor is presumed final and executory; thus, plaintiff need not wait for the questions on the correctness of the assessment to be resolved by the LBAA of Cagayan prior to instituting a collection case against defendant.

Plaintiff likewise contends that if this Court will dismiss the case for reason that the assessment was not final and executory because of the pendency of the appeal before the LBAA, plaintiff will be left with no recourse and Sections 231, 252, 256 of the LGC and Section 7, Rule V of the LBAA Rules of Procedure will be rendered nugatory.

In its Opposition, defendant counters that the first two arguments raised by the plaintiff are mere rehash and reiteration of its previous arguments in its Comment/Opposition to the Motion to Dismiss filed by defendant, which had been adequately discussed and disposed of by the Court in its Resolution dated September 29,

2014. Defendant likewise contends that there is no provision in the LGC which categorically states that the assessment once issued by the assessor is already final and executory; to presume such would render the right of the taxpayer to appeal the assessment before the LBAA under Section 226 of the LGC nugatory.

As regards the third argument, defendant contends that the plaintiff's right to collect real property taxes through judicial action is not absolute and must yield to the jurisdictional requirements of this Court. Defendant likewise points out that under the new Consolidated and Revised Rules of Procedures before the LBAA and CBAA, payment under protest is not a condition precedent to the hearing of the appeal by the LBAA concerned.

Lastly, defendant submits that the LBAA of the Province of Cagayan be given ample opportunity to rule on the issues presented therein to avoid any confusion or conflicting rulings by this Court and the LBAA. At any rate, such decision to be rendered by the LBAA may eventually reach this Court on appeal.

THE COURT'S RULING

We deny the instant Motion.

A perusal of the foregoing shows that the arguments interposed by the plaintiff are the very same contentions raised in its Comment/Opposition (On Motion To Dismiss) filed on August 11, 2014, which have been been exhaustively passed upon by this Court in the assailed Resolution. Thus, further discussing the aforementioned allegations is deemed unnecessary.

Nevertheless, We reiterate that the instant collection case must be dismissed on the ground that this Court is without jurisdiction to entertain the same. If the court clearly has no jurisdiction over the nature of an action, its only authority is to dismiss the case. The court could not decide the case on the merits.[3]

In defining CTA's jurisdiction, Section 7(c) of Republic Act (R.A.) No. 9282, amending R.A. No. 1125, otherwise known as the Law Creating the Court of Tax Appeals, limited this Court's authority to hear and decide collection cases on first instance to those involving final and executory assessments and the principal amount of taxes and fees, exclusive of charges and penalties, claimed therein is at least ₱1,000,000.00. Said provision reads:

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[3] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

> "(c) Jurisdiction over tax collection cases as herein provided:
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> (1) Exclusive original jurisdiction in tax collection cases involving **final and executory assessments** for taxes, fees, charges and penalties: *Provided, however,* That for collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.
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> (2) Exclusive appellate jurisdiction in tax collection cases:
>
> (a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them, in their respective territorial jurisdiction.
>
> (b) Over petitions for review of judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax collection cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts, in their respective jurisdiction." *(Emphasis supplied).*

Unfortunately, this case does not fall within the aforementioned jurisdiction of the Court. Although the principal amount of taxes being claimed by the plaintiff against the defendant exceeds ₱1,000,000.00, there is no final and executory assessment to speak of. As admitted by both parties, defendant timely filed an appeal of the Assessment dated October 3, 2011 issued by the Provincial Assessor before the LBAA of Cagayan, docketed as LBAA Case No. 10-2012. Consequently, when plaintiff filed the instant complaint before this Court, on March 19, 2014, the assessment made by the Provincial Assessor against defendant was not yet final and executory because questions on the validity and correctness of said assessment, including the amount of real property taxes collectible from defendant is yet to be resolved in said LBAA case.

Furthermore, We cannot sustain plaintiff's contention that the assessment dated October 3, 2011 is presumed final and executory following Sections 231 and 256 of the LGC and considering that defendant failed to pay the assessed real property taxes under protest as required in Section 252 of the LGC. While Section 231 of the LGC expressly provides that plaintiff's right to collect is not suspended by an appeal of the assessment or that Section 252 of the LGC requires payment under protest before an appeal may be made, nothing in these provisions categorically state that an assessment for real property taxes, once issued by the provincial assessor, is rendered final, executory and conclusive whereupon a collection case before this Court may be instituted. To be sure, Section 226 of the LGC grants a taxpayer the right to appeal or contest the validity or correctness of a real property tax assessment.

Verily, absent any categorical declaration that the subject assessment has become final and executory, this Court's jurisdiction may not be invoked. Again, it bears to reiterate, that this Court, as a court of special and limited jurisdiction, can only act on cases clearly within its jurisdiction pursuant to the mandate of Our Charter.[4] The Court's jurisdiction and the exercise thereof are laid down by law and cannot be based on a mere presumption or implication.

In the light of the foregoing considerations, there is no cogent reason or overwhelming justification to disturb the assailed Resolution.

WHEREFORE, plaintiff's **"MOTION FOR RECONSIDERATION (ON THE RESOLUTION DATED 29 SEPTEMBER 2014)** filed on October 28, 2014 is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

[4] *Allied Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 175097, February 5, 2010 citing Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.